

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Review of the Definition of Universal Service	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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## SUMMARY

NTCA urges the Commission to add equal access to the list of services included in the definition of universal service. Adding equal access will allow the Commission to attain its stated goal of establishing “a modern equal access and nondiscriminatory regulatory paradigm that will benefit” all consumers. Consumers for the first time ever will have the ability to comparison shop for competitive long distance services on both their landline and wireless phones. As a result, consumers will benefit greatly through lower prices, new service packages, and enhanced inter-modal competition between landline and wireless providers.

Wireless carriers are wrong when they claim that section 332(c)(8) of the Act prohibits the FCC from adding equal access to the definition. Section 332(c)(8) prohibits the FCC from requiring CMRS or wireless carriers to offer equal access as part of its obligations as a common carrier. Making universal service support conditioned upon the provision of equal access in no way “requires” a wireless provider to offer it. Wireless carriers would remain free, as they are today, to choose not to offer equal access to their customers. Wireless and landline carriers seeking or maintaining a competitive eligible telecommunications carrier (CETC) designation would simply choose between providing equal access as a condition of receiving support or decline to provide equal access and forgo support.

Wireless carriers are also mistaken when they threaten that unless they receive universal support without providing equal access they may not compete in rural, high-cost areas. Nothing in the Act directs the Commission to use universal service support to promote wireless competition in rural and high-cost areas. Section 151 of the Act provides that all Americans, so far as possible, should have access to telecommunications services at reasonable charges. Similarly, Section 254(b)(3), states that universal service support in rural and high-cost areas is intended to allow consumers in those areas

access to telecommunications services that are reasonably comparable to similar services and prices available to consumers in urban areas. Even section 214(e), which sets out the standards for a state commission to determine whether a carrier is designated an ETC for purposes of receiving universal service support, makes no reference to "competition." Moreover, sections 251, 252, 253, and 271, which specifically refer to opening local exchange markets to competition, do not mandate the use of universal service support for promoting competition in either non-rural or rural local exchange markets. The Act makes no mention of using universal service support to promote competition.

The Commission should also consider redefining universal service in a limited way that will help the carriers deploy advanced services and make them affordable to Americans living in remote and hard-to-serve areas throughout the country. Rather than establishing unfunded broadband deployment mandates, the Commission should consider incentives for carriers to deploy broadband to make service affordable to all Americans. For example, Commission may consider providing additional universal service funding to carriers in high cost areas that reach certain penetration rates - funding at x level could be available to carriers who make advanced service available to at least 80% of all of their subscribers. This would provide an incentive for carriers covering less densely populated areas to accelerate deployment and a way for carriers to recoup some of their significant investment.

If the Commission includes equal access in the definition of universal service, CETCs currently receiving high-cost support should have until December 31, 2003, to bring their services into compliance with the new definition. Until that time, CETCs should be allowed to continue receiving high-cost support based on the previous definition. Wireless CETCs will be aided in complying with the equal access requirement by the substantial amounts of money they are now receiving from the universal service fund, which in part are based on the ILECs' cost of providing equal access. Other

carriers that have not yet achieved ETC status, or that have not yet begun receiving universal service support, should not be allowed to draw from the fund until they provide equal access.

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**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> hereby files its initial comments in response to the Federal Communications Commission's (Commission or FCC) Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.<sup>2</sup> NTCA urges the Commission to add equal access to the list of services included in the definition of universal service. Adding equal access will allow the Commission to attain its stated goal of establishing "a modern equal access and nondiscriminatory regulatory paradigm that will benefit" all consumers.<sup>3</sup> Consumers for the first time ever will have the ability to comparison shop for competitive long distance services on both their landline and wireless phones. As a result, consumers will benefit greatly through lower prices, new service packages, and enhanced inter-modal competition between landline and wireless providers. Equal access is good for the American consumer and good for the American telecommunications industry.

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, FCC 03-13, Notice of Proposed Rulemaking (rel. Feb. 25, 2003) (NPRM).

**I. THE COMMISSION SHOULD ADD EQUAL ACCESS TO THE LIST OF SERVICES INCLUDED IN THE DEFINITION OF UNIVERSAL SERVICE**

**a. Equal Access Fits Squarely Into The Universal Service Definition Criteria.**

Section 254(c)(1)(A)-(D) of the Act requires that when establishing the definition of services supported by Federal universal service support, the Commission shall consider whether a service meets the following criteria:

- (1) essential to education, public health, or public safety;
- (2) subscribed to by a substantial majority of residential customers;
- (3) deployed in public telecommunications networks by telecommunications carriers; and
- (4) consistent with the public interest, convenience and necessity.

Equal access meets the four-part criteria for acceptance into the definition of universal service.

First, access to the interexchange carrier of the consumer's choice is essential to education, public health and public safety. Subscribers who live in rural areas are particularly dependent on interexchange service to reach medical and emergency services, schools and local government offices. Equal access educates consumers as to the many competing long-distance providers available to choose from and the carriers' prices, terms and conditions associated with their services. Equal access empowers the consumer with opportunity to shop for the long distance carrier particularly suited to his or her needs. The customer can make a choice of carrier based on factors particularly suited to the consumer, such as reliability, price and customer service. Affordable, reliable long distance service is essential to the rural American consumer's ability to make calls for his or her personal and family's care and well-being. Without the choice of equal access provides, the consumer may end up with a long distance service that the consumer cannot afford or upon which he or she cannot depend.

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<sup>3</sup> *In the Matter of Notice of Inquiry Concerning the Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, FCC 02-57, ¶2 (rel. February 28, 2002) (NOI).

Second, equal access is enjoyed by a substantial majority of residential telephone customers. The vast-majority of residential telephone subscribers expect and have a choice of interexchange services through the use of equal access provided by their landline ILEC.

Third, the overwhelming majority of local telecommunications carriers provide equal access to their customers. This includes Verizon, SBC, Bell South, Qwest and approximately 1100 rural ILECs currently providing equal access to their customers. Equal access has been deployed in the public telecommunications networks of most of these companies for well over a decade.

Fourth, it is in the public interest to allow consumers to choose which long-distance provider they would like to receive service from. A carrier that does not offer equal access deprives its customers of choice, potential savings, and the additional benefits of competition. The customer is forced to use whatever long-distance provider the local carrier deems appropriate at a price dictated by the sole long-distance provider. Currently, landline residential consumers benefit from the choice that equal access offers. Landline residential consumers may review the advertisements, compare the plans and choose a long distance service suited to their calling needs. They can make decisions based on informed comparisons of price, quality, and customer service. When a wireless carrier fails to provide equal access, it prohibits consumers from receiving their full range of choice and the complete benefits of competition. Only equal access to gives the public the total benefits of choice and competition.<sup>4</sup>

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<sup>4</sup> Opponents claim that “dial around” numbers are a solution for customers unable to choose their long-distance carrier. Dial around numbers, however, are a scarcely used, unnecessary step for a customer in a hurry to reach the called party. Dial around numbers also take time and require the caller to remember several numbers in addition to the number for the party they are trying to reach. They also do not offer the consumer a true choice among long-distance providers.



**b. The Commission Has The Statutory Authority To Add Equal Access To Definition of Universal Service.**

Section 254(c)(1)(A)-(D) of the Act provides the Commission with the authority to add equal access to the definition of universal service upon its determination that equal access meets the four-part criteria. This is all that is necessary for the Commission to redefine the definition of universal service. Opponents to the inclusion of equal access in the definition of universal service, however, claim that Section 332(c)(8) of the Act prohibits Commission from adding equal access to the definition.<sup>5</sup> They are wrong.

Section 332(c)(8) prohibits the Commission from requiring commercial mobile radio service (CMRS or wireless) carriers to offer equal access as part of its obligations as a common carrier. Making universal service support conditioned upon the provision of equal access in no way “requires” a wireless provider to offer it. Wireless carriers would remain free, as they are today, to choose not to offer equal access to their customers. Adding equal access to the definition of universal service therefore would not result in a mandatory requirement that wireless carriers must provide equal access to their customers.

Wireless carriers further argue that section 332(c)(8) has allowed them to offer creative bundles of local and long distance services and flat-rate calling plans which have benefited consumers. Including equal access as part of the definition of universal service would not alter the legal framework within which the wireless industry has grown and wireless calling plans have flourished. Wireless carriers would be able to continue to offer bundles of local and long distance services and flat-rate calling plans, as well as unbundled local and long distance flat-rate and per-minute calling plans. All that would change would be the requirements under which any carrier would qualify to draw from the explicit support provided by the universal service fund. Wireless and

landline carriers seeking or maintaining competitive eligible telecommunications carrier (CETC) designation would simply choose between providing equal access as a condition of receiving support or decline to provide equal access and forgo support. Wireless carriers would have a choice, not a requirement, whether to offer their customers equal access.

**c. Congress Never Intended For The Commission To Use Universal Service Support To Promote Competition In Rural, High-Cost Areas.**

Opponents to the inclusion of equal access in the definition of universal service claim “CMRS carriers would be ineligible to receive universal service support unless they provide equal access and might choose not to provide services competitive with local exchange service in rural and high-cost areas.”<sup>6</sup> In other words, unless the wireless carriers receive support, they may not provide service nor compete in some existing rural ILEC high-cost service areas. The problem with this philosophy is that Congress never intended universal service support to be used as the basis for stimulating competition in rural and high-cost areas. Indeed, nothing in the Act directs the Commission to use universal service support to promote wireless competition in rural and high-cost areas.

Section 151 of the Act provides that all Americans, so far as possible, should have access to telecommunications services at reasonable charges. Similarly, Section 254(b)(3), states that universal service support in rural and high-cost areas is intended to allow consumers in those areas access to telecommunications services that are reasonably comparable to similar services and prices available to consumers in urban areas. Even Section 214(e), which sets out the standards for a state commission to determine whether a carrier is designated an eligible telecommunications carrier (ETC) for purposes of receiving universal service support, makes no reference to “competition.” Section 214 requires that the carrier offer the supported services defined in universal service and

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<sup>5</sup> NPRM, ¶¶ 69-74.

<sup>6</sup> NRPM, ¶71.

advertise the availability of such services. In the case of an area served by a rural telephone company, the state commission is required to find the designation is in the "public interest," not in the interest of competition. These sections of the Act make no mention of "competition" as being a necessary ingredient to providing universal service or determining whether a carrier is designated an ETC. In fact, nothing in sections 151, 214, and 254 makes any reference to "competition" as being a consideration or principle for establishing universal service support.

Moreover, sections 251, 252, 253, and 271, which specifically refer to opening local exchange markets to competition, do not mandate that universal service support be used as a basis for developing competition in either non-rural or rural local exchange markets. Section 251(f)(1), in particular, exempts a rural telephone company from competition until it has received: (1) a bone fide request for interconnection or unbundled network elements from a competitor, and (2) a state commission has found that the request is not unduly economically burdensome, technically feasible, and consistent with the public interest. Once again, the Act makes no mention of using universal service support to promote competition.

**d. Competitive Neutrality And Regulatory Parity Between Landline And Wireless Carriers Further Justifies Adding Equal Access To The Definition Of Universal Service.**

All CETCs, including wireless CETCs, currently have access to portable universal service support based on the rural and non-rural ILEC costs. A portion of this portable support relates directly to the ILEC's provision of interstate access, which includes in part the provision of equal access. Because wireless CETCs do not provide equal access, but receive universal service funding based on the ILEC's costs, wireless CETCs can receive windfalls of support under the Commission's existing rules. Wireless carriers can then use these windfalls to compete unfairly against rural

ILECs.<sup>7</sup> This disparity in the FCC's rules is inconsistent with the Commission's goal of minimizing disparities so that "no entity receives an unfair competitive advantage."<sup>8</sup> It is also contrary to the Commission's goal "to establish a modern equal access and nondiscriminatory regulatory regime that will benefit consumers."<sup>9</sup> By adding equal access to the list of supported services the Commission will eliminate this disparity and enhance consumer benefits.

## **II. THE COMMISSION SHOULD CONSIDER CREATIVE WAYS TO INCREASE ADVANCED SERVICES DEPLOYMENT AND SUBSCRIBERSHIP.**

The Commission should consider redefining universal service in a limited way that will help the carriers deploy advanced services and make them affordable to Americans living in remote and hard-to-serve areas throughout the country. It is important, however, that the Commission not create deployment mandates without proper consideration of funding. Rather than establishing unfunded broadband deployment mandates, the Commission should consider incentives for carriers to deploy broadband to make service affordable to all Americans. For example, Commission may consider providing additional universal service funding to carriers in high cost areas that reach certain penetration rates - funding at x level could be available to carriers who make advanced service available to at least 80% of all of their subscribers. This would not take funding away from any carrier that currently receives funding. It would merely provide an incentive for carriers covering less densely populated areas to accelerate deployment and a way for carriers to recoup some of their significant investment.

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<sup>7</sup> Section 251(g).

<sup>8</sup> *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8802 (1997).

<sup>9</sup> NOI, ¶ 2.

**III. IF THE COMMISSION EXPANDS THE DEFINITION OF UNIVERSAL SERVICE TO INCLUDE EQUAL ACCESS, IT SHOULD PROVIDE A REASONABLE AMOUNT OF TIME FOR CARRIERS TO COME INTO COMPLIANCE.**

If the Commission expands the definition of universal service to include equal access, NTCA recommends that a reasonable amount of time should be provided for carriers to come into compliance. All CETCs currently receiving high-cost support should have until December 31, 2003, to bring their services into compliance with the new definition of supported services by providing equal access. Until that time, CETCs should be allowed to continue receiving high-cost support based on the previous definition. Wireless CETCs will be aided in complying with the equal access requirement by the substantial amounts of money they are now receiving from the universal service fund, which in part are based on the ILECs' cost of providing equal access. Other carriers that have not yet achieved ETC status, or that have not yet begun receiving universal service support, should not be allowed to draw from the fund until they provide equal access.

**IV. CONCLUSION**

Based on the above reasons, NTCA urges the Commission to add equal access to the list of services included in the definition of universal service.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
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April 14, 2003

# CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, FCC 03-13 was served on this 14th day of April 2003 by first-class, U.S. Mail, postage prepaid, to the following persons:

/s/ Gail Malloy  
Gail Malloy

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